



## 40 CFR Part 52

[EPA-R08-OAR-2022-0857; FRL-10410-01-R8]

### **Air Plan Conditional Approval; Colorado; Revisions to Regulation Number 7 and RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing conditional approval of portions of State Implementation Plan (SIP) revisions to Colorado Air Quality Control Commission (Commission or AQCC) Regulation Number 7 (Reg. 7), which address Colorado's SIP obligation to require reasonably available control technology (RACT) for sources covered by the 2008 miscellaneous metal and plastic parts coatings (miscellaneous metal coatings) control techniques guidelines (CTG) and major source nitrogen oxides (NO<sub>x</sub>) for Moderate nonattainment areas under the 2008 ozone National Ambient Air Quality Standard (NAAQS). These revisions address all of the remaining pieces of the May 31, 2017 and May 10, 2019 submittals that we have not previously acted on. The EPA is taking this action pursuant to the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2022-0857, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in [www.regulations.gov](http://www.regulations.gov). To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

**FOR FURTHER INFORMATION CONTACT:** Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6563, email address: [fulton.abby@epa.gov](mailto:fulton.abby@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. What Action is the EPA Proposing to Take?**

As explained below, the EPA is proposing to conditionally approve into the SIP certain Reg. 7 rules as meeting the 2008 8-hour ozone NAAQS miscellaneous metal coatings CTG<sup>1</sup> and major source NO<sub>x</sub> RACT requirements for the Moderate Denver Metro/North Front Range

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<sup>1</sup> Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, EPA-453/R-08-003, September 2008, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1001JAL.txt>.

(DMNFR) Area. The rules that are the subject of this action were not acted on in our July 3, 2018,<sup>2</sup> February 24, 2021,<sup>3</sup> November 5, 2021<sup>4</sup> rulemakings. This proposed conditional approval is based on the State's commitment to make specified further revisions to these rules, and submit them for approval into the SIP, to address deficiencies identified in the State's May 31, 2017 and May 10, 2019 submittals.

Under section 110(k)(4) of the CAA, the EPA may conditionally approve a plan based on a commitment from a state to adopt specific enforceable measures by a date certain no later than one year from the date of approval. The conditionally approved provisions are a part of the SIP and thus are federally enforceable as of the effective date of the final conditional approval. If the EPA conditionally approves the identified Reg. 7 rules, the State must meet its commitment to submit the necessary SIP revisions to the EPA by June 30, 2023. If the State fails to do so, this action will automatically become a disapproval on that date. If the State submits timely SIP revisions but the EPA finds the SIP submittal to be incomplete, this action will become a disapproval on the date of the EPA's incompleteness finding. In either case, the EPA will notify the State by letter that the conditional approval has converted to a disapproval, and as of the date of that notification the conditionally approved measures will no longer be a part of the approved Colorado SIP. The EPA subsequently will publish a document in the *Federal Register* notifying the public that the conditional approval converted to a disapproval.

If the State submits the necessary SIP revisions by June 30, 2023, the conditionally approved provisions will remain a part of the SIP until the EPA approves or disapproves the new SIP revisions through notice-and-comment rulemaking. If the EPA takes final action approving

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<sup>2</sup> Final Rule, Approval and Promulgation of State Implementation Plan Revisions; Colorado; Attainment Demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions, 83 FR 31068, 31069-31072.

<sup>3</sup> Final Rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7 and RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 11125, 11126-11127.

<sup>4</sup> Final Rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 61071, 61072.

the new revisions into the SIP, in the same final action the EPA will also convert the conditional approval to a full approval by making appropriate revisions to the description of the SIP in the Code of Federal Regulations. If the EPA disapproves the new SIP revisions, the conditional approval will convert to a disapproval, and the conditionally approved provisions will no longer be a part of the approved Colorado SIP.

Any conditional approval action that converts to a disapproval will start an 18-month clock for application of mandatory sanctions under CAA section 179(b) and a two-year clock for the EPA to promulgate a Federal implementation plan under CAA section 110(c)(1). The basis for our proposed action is discussed in this proposed rulemaking. Technical information that we are relying on, as well as the State's October 13, 2022 commitment letter, is in the docket, available at <https://www.regulations.gov>, Docket No. EPA-R08-OAR-2022-0857.

## **II. Background**

### *2008 8-Hour Ozone NAAQS Nonattainment*

On March 12, 2008, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (based on the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years), to provide increased protection of public health and the environment.<sup>5</sup> The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. Specifically, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm.<sup>6</sup> Effective July 20, 2012, the EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data.<sup>7</sup> With that rulemaking, the DMNFR was designated

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<sup>5</sup> Final rule, National Ambient Air Quality Standards for Ozone, 73 FR 16436 (March 27, 2008). The EPA has since further strengthened the ozone NAAQS, but the 2008 8-hour standard remains in effect. See Final Rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (Oct. 26, 2015).

<sup>6</sup> 40 CFR 50.15(b).

<sup>7</sup> Final rule, Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 FR 30088 (May 21, 2012).

nonattainment and classified as Marginal.<sup>8</sup> Ozone nonattainment areas are classified based on the severity of their ozone levels, as determined using the area's design value. The design value is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration at a monitoring site.<sup>9</sup> Areas designated as nonattainment at the Marginal classification level were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012–2014 monitoring data.<sup>10</sup>

On May 4, 2016, the EPA published its determination that the Denver Area, among other areas, had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline, and that it was accordingly reclassified to Moderate ozone nonattainment status.<sup>11</sup> Colorado submitted SIP revisions to the EPA on May 31, 2017 to meet the Denver Area's requirements under the Moderate classification.<sup>12</sup> The EPA took final action on July 3, 2018, approving the majority of the May 31, 2017 submittal, but deferring action on portions of the submitted Reg. 7 RACT rules.<sup>13</sup> On February 24, 2021, the EPA took final action approving additional measures as addressing Colorado's RACT SIP obligations for Moderate ozone nonattainment areas.<sup>14</sup> Areas that were designated as Moderate nonattainment were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2018, based on 2015–2017 monitoring data.<sup>15</sup> On December 26, 2019, the EPA published its determination that the Denver Area, among other areas, had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline, and that it was accordingly reclassified to Serious ozone nonattainment status.<sup>16</sup>

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<sup>8</sup> *Id.* at 30110. The nonattainment area includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson Counties, and portions of Larimer and Weld Counties. *See* 40 CFR 81.306.

<sup>9</sup> 40 CFR part 50, appendix I.

<sup>10</sup> *See* 40 CFR 51.903.

<sup>11</sup> Final rule, Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards, 81 FR 26697 (May 4, 2016).

<sup>12</sup> CAA section 182, 42 U.S.C. 7511a, outlines SIP requirements applicable to ozone nonattainment areas in each classification category. Areas classified Moderate under the 2008 8-hour ozone NAAQS had a submission deadline of January 1, 2017 for these SIP revisions (81 FR at 26699).

<sup>13</sup> 83 FR 31068.

<sup>14</sup> 86 FR 11125.

<sup>15</sup> *See* 40 CFR 51.903.

<sup>16</sup> Final rule, Finding of Failure To Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard, 84 FR 70897 (Dec. 26, 2019); *see* 40 CFR 81.306.

### **III. Summary of the State's SIP Submittals**

We are proposing to take action on Colorado SIP submittals made on two different dates:

#### *May 31, 2017 Submittal*

This submittal contains the State's Moderate ozone attainment plan for the 2008 8-hour ozone NAAQS, including RACT requirements for 100 tons per year (tpy) major sources of VOC and/or NO<sub>x</sub> and for sources subject to a CTG.

We have previously acted on all parts of this SIP submittal except for the State's determination for the miscellaneous metal coatings CTG and major source NO<sub>x</sub> RACT, as to which we are now proposing conditional approval.

#### *May 10, 2019 Submittal*

This submittal contains amendments to Reg. 7 that establish categorical RACT requirements for major sources of NO<sub>x</sub> in the DMNFR Area that emit 100 tpy or more. Specifically, on July 19, 2018 the AQCC adopted RACT requirements for boilers, stationary combustion turbines, lightweight aggregate kilns, glass melting furnaces, and compression ignition reciprocating internal combustion engines (collectively referred to as "stationary combustion equipment") located at major sources of NO<sub>x</sub>.<sup>17</sup> We have previously acted on all parts of this SIP submittal except for revisions to Reg. 7, Part E, Section II.A.4.d., concerning glass melting furnaces, as to which we are now proposing conditional approval.

### **IV. Procedural Requirements**

The CAA requires that states meet certain procedural requirements before submitting SIP revisions to the EPA, including the requirement that states adopt SIP revisions after reasonable notice and public hearing.<sup>18</sup> For the May 31, 2017 submittal, the AQCC provided notice in the Colorado Register on August 10, 2016,<sup>19</sup> and held a public hearing on the SIP revisions on

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<sup>17</sup> On June 29, 2018, the EPA provided comments on Colorado's revised draft ozone SIPs for the DMNFR Area, including the TSD and rules in Reg. 7, Section XVI.D.4. These written comments from the EPA included some comments applicable to the rules we are proposing to act on in this document. The comment letters can be found within the docket for this action on [www.regulations.gov](http://www.regulations.gov).

<sup>18</sup> CAA section 110(a)(2), 42 U.S.C. 7410(a)(2).

<sup>19</sup> 39 CR 15, available at <https://www.sos.state.co.us/CCR/RegisterPdfContents.do?publicationDay=08/10/2016>.

November 17, 2016. The Commission adopted the SIP revisions on November 17, 2016. The SIP revisions became state-effective on January 14, 2017.

For the May 10, 2019 submittal, the AQCC provided notice in the Colorado Register on May 10, 2018,<sup>20</sup> and held a public hearing on the revisions on July 19, 2018. The Commission adopted the SIP revisions on July 19, 2018. The SIP revisions became state-effective on September 14, 2018.

Accordingly, we propose to find that Colorado met the CAA's procedural requirements for reasonable notice and public hearing.

## **V. Reasonably Available Control Technology (RACT) Analysis**

### *A. Background*

Section 172(c)(1) of the CAA requires that SIPs for nonattainment areas “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology).” The EPA has defined RACT as “[t]he lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.”<sup>21</sup> The EPA provides guidance concerning what types of controls may constitute RACT for a given source category by issuing CTG and Alternative Control Techniques (ACT) documents.<sup>22</sup> States must submit a SIP revision requiring the implementation of RACT for each source category in the area for which the EPA has issued a CTG, and for any major source in the area not covered by a CTG.<sup>23</sup>

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<sup>20</sup> 41 CR 9, available at <https://www.sos.state.co.us/CCR/RegisterPdfContents.do?publicationDay=05/10/2018>.

<sup>21</sup> General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas-- Supplement (on Control Techniques Guidelines), 44 FR 53761 (Sep. 17, 1979).

<sup>22</sup> See <https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques> for a list of EPA-issued CTGs and ACTs.

<sup>23</sup> See CAA section 182(b)(2), 42 U.S.C. 7511a(b)(2)); see also Note, RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers, William Harnett, Director, Air Quality Policy Division, EPA (May 2006), available at <https://www.regulations.gov/document/EPA-R08-OAR-2020-0114-0008>.

For a Moderate, Serious, or Severe area a major stationary source is one that emits, or has the potential to emit, 100, 50, or 25 tpy or more, respectively, of VOCs or NO<sub>x</sub>.<sup>24</sup> Accordingly, for the DMNFR Serious nonattainment area, a major stationary source is one that emits, or has the potential to emit, 50 tpy or more of VOCs or NO<sub>x</sub>. RACT can be adopted in the form of emission limitations or “work practice standards or other operation and maintenance requirements,” as appropriate.<sup>25</sup>

As part of its May 31, 2017 Moderate ozone attainment plan, the Division conducted RACT analyses to demonstrate that the RACT requirements for CTG and major sources in the DMNFR Area had been fulfilled. The Division conducted these RACT analyses for VOC and NO<sub>x</sub> by listing state regulations implementing or exceeding RACT requirements for each CTG or non-CTG category at issue, and by detailing the basis for concluding that these regulations fulfilled RACT, through comparison with established RACT requirements described in the CTG and ACT guidance documents and rules developed by other state and local agencies. The EPA approved the majority of the State’s CTG RACT analysis on July 3, 2018.<sup>26</sup>

In July 2018, the Commission adopted categorical RACT requirements for combustion equipment at major sources under the Moderate classification that the Commission had determined in 2016 were not addressed by SIP RACT requirements. In November 2019, the Commission adopted SIP requirements to include provisions that implement RACT for certain CTG VOC source categories in the DMNFR Area. Specifically, the Commission adopted categorical RACT requirements for industrial cleaning solvent and metal furniture surface coating operations. The EPA approved these revisions on February 24, 2021.<sup>27</sup>

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<sup>24</sup> See CAA sections 182(b), 182(c), 182(d), 182(f)(1), and 302(j).

<sup>25</sup> See Memorandum, “Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO<sub>x</sub> RACT Requirements,” Sally Shaver, Director, Air Quality Strategies & Standards Division, EPA (Nov. 7, 1996), available at [https://www.epa.gov/sites/production/files/2016-08/documents/shavermemogenericract\\_7nov1996.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/shavermemogenericract_7nov1996.pdf).

<sup>26</sup> See 83 FR 31068. A negative declaration as to RACT for sources covered by the aerospace CTG was approved on November 5, 2021 (86 FR 61071). Colorado’s RACT demonstrations for sources covered by the industrial cleaning solvents, metal furniture coatings (2007), and wood furniture CTGs were approved on February 24, 2021 (86 FR 11127); and the state’s RACT demonstration for sources covered by the oil and gas CTG was conditionally approved on May 13, 2022 (87 FR 29228).

<sup>27</sup> 86 FR 11127.



The RACT submissions that we are now proposing to approve include those that we have not previously acted on that are addressing RACT for CTG and Moderate non-CTG VOC and NO<sub>x</sub> sources and categories. We previously deferred action on these pieces because we determined that Colorado's SIP revisions did not meet major source NO<sub>x</sub> RACT for the Moderate classification or miscellaneous metal coatings CTG RACT requirements. On October 14, 2022, Colorado submitted a letter<sup>28</sup> to the EPA committing to correct the deficiencies through rulemaking in December 2022. The Colorado Air Pollution Control Division (Division) has proposed revisions that are consistent with the commitments in the letter.<sup>29</sup> Based on the State's commitment to correcting the deficiencies identified by the EPA, and recognizing the substantial progress made toward fulfilling that commitment, we are now proposing conditional approval of the miscellaneous metal coatings CTG and major source NO<sub>x</sub> rules for which we previously deferred action.

#### *B. Evaluation of RACT for Miscellaneous Metal Coatings Sources*

As part of its May 31, 2017 submittal, the Division determined that RACT for sources covered by the miscellaneous metal coatings CTG was met through existing Reg. 7 rules that were based on the EPA's 1978 metal coatings CTG. The Division also submitted a negative declaration<sup>30</sup> for the plastic parts coatings limits in Tables 3, 4, 8, and 9 of the 2008 miscellaneous metal coatings CTG.<sup>31</sup> The EPA's 2008 miscellaneous metal coatings CTG recommends expanded coatings VOC content limits from four to fifty categories and work practices, application methods, and recordkeeping. In response to the EPA's concerns with Colorado's reliance on the EPA's 1978 Metal Coating CTG, Colorado revised the metal surface coating requirements in its May 10, 2019 submittal. In a separate action, the EPA proposes to

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<sup>28</sup> The letter is dated October 13, 2022 and was received on October 14, 2022. See "Colorado Commitment Letter: 2008 Ozone NAAQS Serious SIP" email from Jessica Ferko, Planning & Policy Program Manager, Colorado Department of Public Health and Environment (in the docket).

<sup>29</sup> See <https://drive.google.com/drive/u/0/folders/1zwYGnKubclWxAcTwOCVhq6xAWIz1FppE>.

<sup>30</sup> States are not required to adopt RACT limits for source categories for which no sources exist in a nonattainment area, and can submit a negative declaration to that effect.

<sup>31</sup> See p. 6-3 of the Moderate ozone attainment plan, contained in the docket.

find that Colorado’s submittal for sources subject to VOC coating categories in Tables 2 and 7 of the CTG in the DMNFR Area provides for the implementation of RACT.<sup>32</sup> Additionally, the Division now has committed to adopting VOC content limits for motor vehicle materials reflected in Table 6 of the CTG and associated work practices in Reg. 7, Part C, Section I.P.<sup>33</sup> Finally, the Division is submitting a negative declaration for pleasure craft surface coatings in Table 5 of the CTG.

The Division compared requirements for miscellaneous metal parts coatings to existing Colorado regulations, Federal rules, CTG requirements, information and determinations in the RACT/BACT/LAER Clearinghouse (RBLC), and other state requirements and regulations, and certified that Reg. 7 approved rules demonstrated RACT for Miscellaneous Metal Parts Coatings.<sup>34</sup> We have reviewed Colorado’s new and revised VOC rules for the categories covered by the miscellaneous metal coatings CTG and the demonstrations submitted by Colorado, and have compared the emission limitations and control requirements with those of the CTG, Federal rules, information and determinations in the RBLC, and other state requirements and regulations.<sup>35</sup> As previously discussed, we approved the majority of the State’s previous submittals as meeting RACT requirements. This proposal is not intended to reopen or revisit any aspect of previous final rules. Section VI includes a detailed discussion of the rules that the EPA is proposing to take action on here. A summary of past actions as they relate to CTG VOC coating categories and limits is contained in Table 1 of this action.

**Table 1. CTG Coating Categories and EPA Actions**

CTG Coating Categories	Colorado Submittal Date	EPA Action
Table 2. Metal Parts and Products VOC Content Limits	May 10, 2019	Proposed Approval Anticipated 2022. <sup>36</sup>

<sup>32</sup> Docket ID. EPA-R08-OAR-2022-0632.

<sup>33</sup> Colorado Commitment Letter Serious SIP- 2008 Ozone NAAQS, Michael Ogeltree, Director, Air Pollution Control Division, Colorado Department of Public Health and Environment, Oct. 13, 2022 (in the docket for this action).

<sup>34</sup> See p. 6-4 and Appendix 6-B on p. 6-19 of Colorado’s 2008 Ozone Moderate Area Attainment Plan for the DMNFR.

<sup>35</sup> See the May 2021 EPA TSD included in the docket for this action.

<sup>36</sup> Docket ID. EPA-R08-OAR-2022-0632.

Table 3. Plastic Parts and Products VOC Content Limits	May 31, 2017 (Negative declaration)	Approved 83 FR 31068
Table 4. Automotive/Transportation and Business Machine Plastic Parts VOC Content Limits	May 31, 2017 (Negative declaration)	Approved 83 FR 31068
Table 5. Pleasure Craft Surface Coating VOC Content Limits	Anticipated by June 30, 2023 (Negative declaration)	Conditional Approval
Table 6. Motor Vehicle Materials VOC Content Limits	Anticipated by June 30, 2023	Conditional Approval
Table 7. Metal Parts and Products VOC Emission Rate Limits	May 10, 2019	Proposed Approval Anticipated 2022. <sup>37</sup>
Table 8. Plastic Parts and Products VOC Emission Rate Limits	May 31, 2017 (Negative declaration)	Approved 83 FR 31068
Table 9. Automotive/Transportation and Business Machine Plastic Parts VOC Emission Rate Limits	May 31, 2017 (Negative declaration)	Approved 83 FR 31068

### *C. Evaluation of RACT for Glass Melting Furnaces and Major Sources of NO<sub>x</sub>*

In preparing its RACT determinations, Colorado reviewed source permits, consulted with Division permitting and enforcement staff involved with each source, and consulted with the sources themselves.<sup>38</sup> Colorado also considered control strategies identified in the CTGs, ACTs, RBLC, EPA's Menu of Control Measures, New Source Performance Standards (NSPS), emission guidelines, National Emission Standards for Hazardous Air Pollutants (NESHAP), and in Colorado's regulations.<sup>39</sup> On May 10, 2019, Colorado submitted RACT rules in Reg. 7 for glass melting furnaces located at major sources of NO<sub>x</sub> and VOCs (100 tpy or greater). Based on the EPA's concerns that the rules provided for an exemption from the NO<sub>x</sub> emission limit of 1.2 lbs/ton of glass pulled during periods when production fell below 35% maximum designed

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<sup>37</sup> *Id.*

<sup>38</sup> See Colorado's Technical Support Document for Reasonably Available Control Technology for Boilers, Turbines, Engines and Aggregate Kilns at Major NO<sub>x</sub> Sources in the DMNFR Nonattainment Area, July 2018. Available within the docket for this action.

<sup>39</sup> See *id.*

production,<sup>40</sup> the Division has proposed revised rules that remove this exemption so that the NOx limit applies during all periods of operation, including abnormally low production, except during the initial startup of a new furnace or an existing furnace after a cold rebuild. During these events, which occur approximately every 10-20 years, natural gas fuel consumption of portable burners used to heat the main furnace(s) is limited and must be recorded and counted toward the existing annual limit for furnaces. Additionally, NOx emissions from the portable burners will count toward the existing annual ton per year NOx limit for the furnace. Once heating is switched over to the main furnace, NOx emissions must be monitored via a continuous emissions monitoring system/continuous emissions rate monitoring system (CEMS/CERMS). Production data will be used to calculate the 30-day rolling average and ensure compliance with the 1.2 lbs NOx/ton of glass pulled limit. We therefore propose to find that the combination of emission limits in the revised provisions apply continuously during all modes of operation in line with CAA section 302(k).

We have reviewed Colorado's new rules for glass melting furnaces located at major sources of VOC and NOx and the demonstrations submitted by Colorado,<sup>41</sup> and have compared the emission limitations and control requirements with those of Federal rules, consent decrees, information and determinations in the RBLC, and other state requirements and regulations.<sup>42</sup> As previously discussed, we approved the majority of the State's previous submittals as meeting RACT requirements.<sup>43</sup> We also anticipate proposing approval of additional major source RACT requirements in 2022.<sup>44</sup> This proposal is not intended to reopen or revisit any aspect of

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<sup>40</sup> See the EPA's June 29, 2018 comments on Colorado's revised draft ozone SIPs for the DMNFR Area, in the docket for this action.

<sup>41</sup> See Colorado's Technical Support Document for Reasonably Available Control Technology for Boilers, Turbines, Engines and Aggregate Kilns at Major NOx Sources in the DMNFR Nonattainment Area, July 2018. See also Colorado's Technical Support Document for Reasonably Available Control Technology for Major Sources Supporting the Denver Metro/North Front Range State Implementation Plan for the 2008 and 2015 8-Hour Ozone National Ambient Air Quality Standards, October 31, 2022. Available within the docket for this action.

<sup>42</sup> See the EPA TSD included in the docket for this action.

<sup>43</sup> 86 FR 11125 (Feb. 24, 2021).

<sup>44</sup> See docket ID. EPA-R08-OAR-2022-0632.

previously approved rules. Section VI includes a detailed discussion of the rules that the EPA is proposing to take action on here.

*D. Proposed RACT Determination for Miscellaneous metal coatings CTG and Glass Melting Furnaces at Major Sources of NO<sub>x</sub>*

Based on our review, and as supported by the State's commitment to develop and submit additional VOC coating content limits and associated work practices, definitions, recordkeeping, and recording requirements for miscellaneous metals coatings and NO<sub>x</sub> emission limits for glass melting furnaces at major sources, we propose to conditionally approve the rules included in the State's commitment letter as meeting RACT requirements and providing for the lowest emission limitation through application of control techniques that are reasonably available considering technological and economic feasibility. Therefore, we propose to conditionally approve the rules noted above as satisfying CAA RACT requirements for the miscellaneous metal coatings CTG sources and glass melting furnaces in the DMNFR Area.<sup>45</sup> For more information, see the Technical Support Document (TSD) for this action.

**VI. The EPA's Evaluation of SIP Control Measures in the October 13, 2022**

**Commitment Letter**

*Reg. 7, Part C, Section I.P., Miscellaneous metal coatings*

Section I of Part C contains rules for surface coating operations. The revised Section I.P., Motor Vehicle Materials, applies to automotive coating facilities where the total actual VOC emissions from coatings, including cleaning activities, at the facility are greater than or equal to 2.7 tons per 12-month rolling period, before consideration of controls.

Section I.P.2. adds new definitions associated with the requirements in I.P. Section I.P.4. includes new control requirements for automotive coating facilities including reducing VOC emissions with an emission control system having a control efficiency of 90% or greater or complying with the VOC content limits established in Tables 3 of Section I.P. Owners and

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<sup>45</sup> See <https://www.epa.gov/ground-level-ozone-pollution/ract-information>.

operators must use and follow application methods and work practice standards in Sections I.P.5 and 6 to reduce VOC emissions. These include the use of high-volume low-pressure spray, roller coat, and airless spray; storing all VOC-containing coatings, thinners, coating-related waste materials, cleaning materials, and used shop towels in closed containers; and minimizing VOC emissions from cleaning of application, storage, mixing, and conveying equipment by cleaning equipment without atomizing the cleaning solvent and capturing spent solvent in closed containers. Section I.P.7. contains recordkeeping requirements to demonstrate compliance with Section I.P. Records must be maintained for a minimum of five years and made available to the Division upon request.

A detailed review of Section I.P. is in the TSD for this action. We propose to find that the provisions in Section I.P. are consistent with CAA requirements, represent RACT for the emission limits in Table 6 “Motor Vehicle Materials VOC Content Limits” of the 2008 Miscellaneous Metal Parts and Products CTG, and that they strengthen the SIP. We therefore propose to conditionally approve the revisions in Part C, Section I.P.

*Reg. 7, Part E, Section II.A.4.d. Glass Melting Furnaces*

Section II of Part E contains rules for the control of emissions from stationary and portable combustion equipment in the DMNFR Area. The Commission revised this section of Reg. 7 to include provisions in the SIP that require the implementation of RACT for glass melting furnaces at major sources of NO<sub>x</sub> emissions in Section II.A.4.d. Affected sources must comply with a limit of 1.2 pounds of NO<sub>x</sub> per ton of glass pulled on a 30-production-day rolling average. For periods when no glass is pulled, NO<sub>x</sub> mass emissions must be calculated and included in the annual mass emissions totals for the furnace. Section II.A.4.d.(ii)(A) limits portable burner fuel use to 8 million standard cubic feet of natural gas during the initial heating phase following an original construction or refractory brick replacement or repair project. NO<sub>x</sub> emissions from the use of portable burners must be calculated using the process described in

Section II.A.4.d.(ii)(A). SIP-approved Section II.A.5.c.(i)(A)<sup>46</sup> requires continuous emission monitoring to monitor compliance with the applicable emission limit. Records and reporting requirements to demonstrate compliance with Section II.A.4.d. controls are included in SIP-approved Sections II.A.7 and 8.<sup>47</sup>

A detailed evaluation of Section II is in the TSD for this action. We propose to find that the provisions in Section II are consistent with CAA and RACT requirements, and that they strengthen the SIP. We therefore propose to approve the revisions in Part E, Section II.

The revisions described in this section<sup>48</sup> will strengthen the SIP, and (once the State has submitted the revised regulations described in its commitment letter) will meet CAA and RACT requirements. We therefore propose to conditionally approve these revisions into the SIP.

## **VII. Proposed Action**

For the reasons expressed above, the EPA proposes to conditionally approve revisions to Reg. 7, Part C, Section I.P. and Reg. 7, Part E, Section II.A.4. Additionally, the EPA is proposing to conditionally approve Colorado's determination that the Reg. 7 revisions satisfy RACT requirements for the Colorado ozone SIP for the 2008 miscellaneous metal coatings CTG and major source NO<sub>x</sub> RACT for the 2008 8-hour Moderate ozone area. Under section 110(k)(4) of the Act, the EPA may approve a SIP revision based on a commitment by a state to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. On October 14, 2022, Colorado submitted a letter committing to adopt and submit specific revisions by June 30, 2023.<sup>49</sup> Specifically, the State has committed to add additional VOC coating content limits and associated work practices, definitions, recordkeeping, and recording requirements for motor vehicle materials, submit a negative

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<sup>46</sup> See [https://www.epa.gov/system/files/documents/2021-09/co-table-c.pdf#reg7\\_parte](https://www.epa.gov/system/files/documents/2021-09/co-table-c.pdf#reg7_parte).

<sup>47</sup> *Id.*

<sup>48</sup> With the exception of revisions described in the State's commitment letter, which have not been submitted as SIP revisions yet. As previously noted, those revisions will be evaluated in a separate rulemaking after the state submits them to the EPA.

<sup>49</sup> Although CAA section 110(k)(4) allows the EPA to make a conditional approval based on a commitment to act within one year of the final conditional approval, Colorado has committed to act on a much more accelerated schedule.

declaration for pleasure craft surface coatings, and add NO<sub>x</sub> emission limits for glass melting furnaces at major sources. If we finalize our proposed conditional approval, Colorado must adopt and submit the specific revisions it has committed to by June 30, 2023 in order for the conditional approval to convert to full approval. We note that the Division has proposed to adopt the revisions as outlined in the commitment letter at the December 2022 AQCC hearing, and we anticipate that the State will meet its deadline to submit these measures as SIP revisions. However, if Colorado does not comply with its commitment by June 30, 2023, if we find Colorado's SIP submission provided to fulfill the commitment to be incomplete, or if we disapprove the SIP submission, this conditional approval will convert to a disapproval. If any of these occur and our conditional approval converts to a disapproval, that will constitute a disapproval of a required plan element under part D of title I of the Act, which will start an 18-month clock for sanctions<sup>50</sup> and the two-year clock for a Federal implementation plan.<sup>51</sup>

### **VIII. Consideration of Section 110(l) of the CAA**

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and public hearing.

The Colorado SIP revisions that the EPA is proposing to conditionally approve do not interfere with any applicable requirements of the Act. The Reg. 7 revisions are intended to strengthen the SIP and to serve as RACT for certain sources for the Colorado ozone SIP. We anticipate the submittal to show that the revisions were adopted after reasonable public notices and hearings because the revisions are currently in the public comment phase. Therefore, CAA section 110(l) requirements are satisfied.

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<sup>50</sup> See CAA section 179(a)(2).

<sup>51</sup> See CAA section 110(c)(1)(B).



## **IX. Environmental Justice Considerations**

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. Additionally, Executive Order 13985 (86 FR 7009, Jan. 25, 2021) directs Federal agencies to assess whether and to what extent their programs and policies perpetuate systemic barriers to opportunities and benefits for underserved populations, and Executive Order 14008 (86 FR 7619, Feb. 1, 2021) directs Federal agencies to develop programs, policies, and activities to address the disproportionate and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities.

To identify potential environmental burdens and susceptible populations in the DMNFR area, a screening analysis was conducted using the EJSCREEN<sup>52</sup> tool to evaluate environmental and demographic indicators within the area, based on available data from the Census Bureau’s American Community Survey. The tool outputs showing the results of this assessment are in the docket for this action. These results indicate that within the DMNFR area there are census block groups that are above the national averages and above the 80<sup>th</sup> percentile (in comparison to the nation as a whole) for the numbers of persons experiencing low income and people of color. These populations may be vulnerable and subject to disproportionate impacts within the meaning of the executive orders described above. Further, as the EJSCREEN analysis is a screening-level assessment and not an in-depth review, it is possible that there are other vulnerable groups within the DMNFR area.

As to all vulnerable groups within the DMNFR area, as explained below we believe that this action will be beneficial and will tend to reduce impacts. When the EPA establishes a new or

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<sup>52</sup> EJSCREEN is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators; available at <https://www.epa.gov/ejscreen/what-ejscreen>.

revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. If an area is designated nonattainment for a NAAQS, the state must develop a plan outlining how the area will attain and maintain the standard by reducing air pollutant emissions. In this action we are proposing to conditionally approve state rules as meeting the CAA standard for RACT, which the EPA has defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Approval of these rules into the SIP will establish federally enforceable requirements that will reduce emissions from coatings and major source emission points in the area. These requirements will contribute to the increased protection of those residing, working, attending school, or otherwise present in those areas, and we propose to determine that this rule, if finalized, will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

#### **X. Incorporation by Reference**

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Colorado AQCC Regulation 7 pertaining to the control of ozone via ozone precursors and control of hydrocarbons from oil and gas emissions discussed in section VI of this preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **XI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

Accordingly, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 28, 2022.

**KC Becker,**

*Regional Administrator, Region 8.*

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